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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 LOUIS CHARLES ARBEE II,

11 Petitioner,

14 vs.

18 ALAN HERNANDEZ, Chief Deputy  
Warden,

19  
20 Respondent.

CASE NO. 12cv1891-MMA (BGS)

**ORDER ADOPTING REPORT AND  
RECOMMENDATION OF UNITED  
STATES MAGISTRATE JUDGE;**

[Doc. No. 11]

**OVERRULING PETITIONER'S  
OBJECTIONS;**

[Doc. No. 12]

**GRANTING RESPONDENT'S  
MOTION TO DISMISS FIRST  
AMENDED PETITION**

[Doc. No. 7]

**DECLINING TO ISSUE  
CERTIFICATE OF  
APPEALABILITY**

22 Petitioner Louis Charles Arbee II filed a first amended petition for writ of  
23 habeas corpus ("petition") pursuant to 28 U.S.C. § 2254 challenging the California  
24 Department of Corrections' March 8, 2011 decision finding him guilty of a rules  
25 violation for violating Title 15 of the California Code of Regulations, section  
26 3005(d)(1), battery with a weapon or physical force causing mortal or serious injury  
27 or rape. *See* Doc. No. 5. Respondent moves to dismiss the petition, arguing that  
28 Petitioner's challenge to the disciplinary action has been procedurally defaulted. *See*

1 Doc. No. 7. Petitioner filed a response to the motion. *See* Doc. No. 9. The matter  
 2 was referred to United States Magistrate Judge Bernard G. Skomal for preparation of  
 3 a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1), and Civil Local  
 4 Rule HC.2. Judge Skomal issued a well-reasoned and thorough Report  
 5 recommending that the petition be dismissed. *See* Doc. No. 11. Petitioner filed  
 6 objections to the Report and Recommendation, to which Respondent replied. *See*  
 7 Doc. Nos. 12, 13.

8 Pursuant to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. §  
 9 636(b)(1), the Court must “make a *de novo* determination of those portions of the  
 10 report . . . to which objection is made,” and “may accept, reject, or modify, in whole  
 11 or in part, the findings or recommendations made by the magistrate [judge].” 28  
 12 U.S.C. § 636(b)(1); *see also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir.  
 13 1989). Due to the general nature of Petitioner’s objections, the Court conducted a *de*  
 14 *novo* review of the entire record. The Court finds the objections to be without merit.

15 Accordingly, the Court concludes that Judge Skomal issued an accurate report  
 16 and well-reasoned recommendation that Respondent’s motion be granted and the  
 17 instant petition be dismissed. The Court **ADOPTS** the Report and Recommendation  
 18 in its entirety, **GRANTS** Respondent’s motion to dismiss, and **DISMISSES**  
 19 Petitioner’s first amended petition with prejudice.

#### 20 CERTIFICATE OF APPEALABILITY

21 Rule 11 of the Federal Rules Governing Section 2254 Cases states that “the  
 22 district court must issue or deny a certificate of appealability when it enters a final  
 23 order adverse to the applicant.” A certificate of appealability is not issued unless  
 24 there is “a substantial showing of the denial of a constitutional right.” 28 U.S.C. §  
 25 2253(c)(2). Under this standard, a petitioner must show that reasonable jurists could  
 26 debate whether the petition should have been resolved in a different manner or that  
 27 the issues presented were adequate to deserve encouragement to proceed further.  
 28 *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003), quoting *Slack v. McDaniel*, 529

1 U.S. 473, 484 (2000). For the reasons set forth in the Report and Recommendation  
2 and incorporated by reference herein, the Court finds that this standard has not been  
3 met and therefore **DECLINES** to issue a certificate of appealability in this case.

4 The Clerk of Court is instructed to close the case.

5 **IT IS SO ORDERED.**

6 DATED: April 4, 2013

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8 Hon. Michael M. Anello  
9 United States District Judge  
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